

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 139

May 2, 1995, 11:44 a.m.
Page S-5940 Temp. Record

PRODUCT LIABILITY/Health Care Punitive Damage Cap

SUBJECT: Product Liability Fairness Act . . . H.R. 956. Snowe amendment No. 608 to the McConnell amendment No. 603 to the Gorton substitute amendment No. 596.

ACTION: AMENDMENT AGREED TO, 60-40

SYNOPSIS: As passed by the House, H.R. 956, the Product Liability Fairness Act, will establish uniform Federal and State civil litigation standards for product liability cases and other civil cases, including medical malpractice actions.

The Gorton substitute amendment would apply only to Federal and State civil product liability cases. It would abolish the doctrine of joint liability for noneconomic damages, would create a consistent standard for the award of punitive damages, and would limit punitive damage awards.

The McConnell amendment would reform Federal and State medical malpractice laws by eliminating joint liability for noneconomic and punitive damages, capping punitive damage awards at the greater of \$250,000 or 3 times economic losses, creating a 2-year statute of limitations starting from the time of discovery of an injury, allowing for periodic payment of awards over \$100,000, requiring the reduction of awards by the amount of compensation received from collateral sources, limiting attorney contingency fees to of the first \$150,000 recovered and of any additional amount recovered, and encouraging States to adopt alternative dispute resolution mechanisms.

The Snowe amendment would change the proposed means of limiting punitive damage awards in medical malpractice cases. It would limit punitive damage awards to 2 times the sum of the amount awarded to the claimant for economic loss and the amount awarded to the claimant for noneconomic loss (the underlying McConnell amendment would instead limit punitive damage awards to the greater of 3 times economic losses or \$250,000).

Those favoring the amendment contended:

The Snowe amendment would create equal treatment for poorer claimants. A rich person who receives the same injury as a result

(See other side)

YEAS (60)			NAYS (40)			NOT VOTING (0)	
Republicans (49 or 91%)	Democrats (11 or 24%)		Republicans (5 or 9%)	Democrats (35 or 76%)		Republicans (0)	Democrats (0)
Abraham	Helms	Conrad	Ashcroft	Akaka	Harkin		
Bennett	Hutchison	Daschle	Gramm	Baucus	Heflin		
Bond	Inhofe	Feinstein	Lugar	Biden	Hollings		
Brown	Jeffords	Kerrey	Packwood	Bingaman	Inouye		
Burns	Kassebaum	Kohl	Smith	Boxer	Johnston		
Campbell	Kempthorne	Levin		Bradley	Kennedy		
Chafee	Kyl	Lieberman		Breaux	Kerry		
Coats	Lott	Mikulski		Bryan	Lautenberg		
Cochran	Mack	Moseley-Braun		Bumpers	Leahy		
Cohen	McCain	Nunn		Byrd	Moynihan		
Coverdell	McConnell	Robb		Dodd	Murray		
Craig	Murkowski			Dorgan	Pell		
D'Amato	Nickles			Exon	Pryor		
DeWine	Pressler			Feingold	Reid		
Dole	Roth			Ford	Rockefeller		
Domenici	Santorum			Glenn	Sarbanes		
Faircloth	Shelby			Graham	Simon		
Frist	Simpson				Wellstone		
Gorton	Snowe						
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hatch	Thompson						
Hatfield	Thurmond						
	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

of medical malpractice as a poor person will usually have greater economic damages than that poor person. For example, a debilitating injury that makes it impossible to work may cost a wealthy individual millions of dollars in income but will cost a poorer individual only thousands of dollars in lost wages. The purpose of making economic damage awards is to make the injured parties "whole" by making certain that they do not suffer any economic loss as a result of their injuries. Therefore, though the same injury is suffered, it is just to provide greater compensation to the person who suffered greater economic loss.

However, it would not be just to provide greater punitive damages when a wealthier individual is injured. The purpose of punitive damages is to stop companies from engaging in unacceptable behavior, such as factoring into their products an "acceptable" number of injuries. For example, McDonald's knew it could get more cups of coffee per pot by having its coffee at a certain high temperature, and it also knew, on average, how many people would be scalded by that coffee and would file suit. The expected costs of settling those suits were less than the expected gains from getting more cups of coffee per pot, so McDonald's decided the expected level of injuries was acceptable. Recently, a jury decided that McDonald's should not be allowed to get away with essentially planning on injuring an expected number of people, and consequently awarded an enormous sum in punitive damages as a means of prodding it to change its policy. Punitive damages are usually based, at least partially, upon the size of the company being sued; larger damages are awarded against larger companies to achieve the same deterrent effect.

The McConnell amendment, though, would have the effect of basing punitive damages in medical malpractice cases on the wealth of the person injured, because it would cap such damages at the greater of 3 times economic losses or \$250,000. Thus, a rich person who suffered \$5 million in economic damages could also receive \$15 million in punitive damages; a poor person with exactly the same injury but who suffered only \$100,000 in economic losses could receive no more than \$300,000.

Companies should not be punished more for hurting rich people than for hurting poor people. Accordingly, we have proposed the Snowe amendment. The Snowe amendment would greatly equalize matters by basing punitive damages on all losses that are suffered, including noneconomic losses. Noneconomic losses, such as for pain and suffering, are often much greater than economic losses. Thus, the Snowe amendment would remove most of the disparity in punitive damage awards based on income that would be created by the underlying amendment. Some of us who support the amendment agree with the award of punitive damages, while others of us question the constitutionality of imposing punishments in civil trials and applaud those States that forbid them. We agree, though, that if they are to be awarded they should not be based on the income of the people who are injured, and we are therefore pleased to vote in favor of the Snowe amendment.

No arguments were expressed in opposition to the amendment.